



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input type="checkbox"/> New <input checked="" type="checkbox"/> Change <input type="checkbox"/> Cancel		Vendor Code		SC		A		Contract Number	
County Department Real Estate Services Department				Dept. Orgn.		Contractor's License No.			
County Department Contract Representative David H. Slaughter, Director				Telephone 387-7813		Total Contract Amount			
Contract Type <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:									
If not encumbered or revenue contract type, provide reason:									
Commodity Code			Contract Start Date		Contract End Date		Original Amount		Amendment Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source		GRC/PROJ/JOB No. N:31984		Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source		GRC/PROJ/JOB No.		Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source		GRC/PROJ/JOB No.		Amount	
Project Name SAN BERNARDINO - Glen Helen - Earthquake Monitoring System				Estimated Payment Total by Fiscal Year					
				FY	Amount	I/D	FY	Amount	I/D
Contract type 2(d)									

CONTRACTOR United States Department of the Interior

Federal ID No. or Social Security No. Nancy King, Geologist

Contractor's Representative _____

Address 525 S. Wilson Avenue, Pasadena, CA 91106 Phone (626) 583-7232

Nature of Contract: *(Briefly describe the general terms of the contract)*

This Use Permit is for a period of five (5) years with two (2) five-year options to extend. Premises consist of 300 gross square feet of land for operation of an earthquake monitoring system in the Glen Helen Regional Park.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink) ► <u>SEE SIGNATURE PAGE</u> County Counsel Date _____	Reviewed as to Contract Compliance ► _____ Date _____	Presented to BOS for Signature ► _____ Department Head Date _____
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Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keved By

REGIONAL PARKS DIVISION

USE PERMIT

1. The County of San Bernardino, hereinafter referred to as COUNTY, hereby permits the United States Department of the Interior, Geological Survey, Earthquake Hazardous Team, whose address is 525 S. Wilson Ave., Pasadena, California 91106, hereinafter referred to, jointly and severally, as PERMITTEE, to use a portion of the COUNTY-owned and/or controlled Glen Helen Regional Park ("Use Area") as shown on Exhibit "A" attached hereto. This permit is effective from and including July 1, 2004 to and including June 30, 2009 and includes two (2) five-year options to extend the term.

2. **USE:** PERMITTEE may use the Use Area for only the following purpose: operate, monitor, install and service earthquake monitoring equipment. PERMITTEE must not use the Use Area for any other purpose.

3. **FEES:** In lieu of monetary consideration, PERMITTEE agrees to:

A. Notify the COUNTY or on-site representative prior to entry for any maintenance and/or service visits if required.

B. Restore the Use Area as nearly as possible to the condition at the start of the permit.

C. Maintain the Use Area in a safe manner, and further agrees to address any immediate safety concerns brought forth by the COUNTY or the on-site representative within 72 hours of notification.

D. COUNTY shall not be held responsible for loss of, or damage to equipment and controls installed within the Use Area.

E. Installation and maintenance of the structures and/or equipment on the Use Area shall be effected with all reasonable diligence and precaution to avoid damage to the land, property, or personnel.

4. **INSURANCE AND INDEMNIFICATION:**

A. **Indemnification** - The PERMITTEE agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY, its authorized officers, agents, volunteers and employees, from any and all claims, actions, losses, damages, and/or liability arising out of this permit from any cause whatsoever, including the acts, errors or omissions of any person, and for any costs of expenses incurred by the COUNTY on account of any claim therefore except where such indemnification is prohibited by law. The PERMITTEE's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence, but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. The PERMITTEE's indemnification obligation shall survive the PERMITTEE's use. The insurance provisions in this Paragraph 4, INSURANCE AND INDEMNIFICATION, shall not be interpreted in a manner that

limits the indemnification obligation.

B. The PERMITTEE, a subdivision of the Federal Government, promises to perform the work in the Use Area with all reasonable diligence and precaution. Failure to do so could be a breach of contract which could be disposed of under the Tucker Act (28 U.S. C. ss 1490). The Federal Tort Claims Act (28 U.S. C. ss 2671) provides recourse against the Federal Government for negligent acts or omissions of employees resulting in injury or damage.

C. The PERMITTEE further agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States by third parties for personal injury or property damage resulting from the negligent act or omission of any employee of the Federal Government in the course of his employment (28 U.S. C. 2617, et seq.)

D. The PERMITTEE hereby agrees that all proper claims will be disposed of under the Federal Tort Claims Act. In conjunction with this, the PERMITTEE can, and the COUNTY does, require its contractor, if any, to provide a certificate of insurance to cover the contractor's activities during the course of the specific project.

E. Insurance - Without in anyway affecting the indemnity herein provided and in addition thereto, PERMITTEE shall secure and maintain throughout the contract the following types of insurance with limits as shown. If the PERMITTEE is a public entity, the PERMITTEE may meet these insurance requirements through a State approved program of self-insurance.

(1) **Comprehensive General and Automobile Liability Insurance** - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

F. Additional Named Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.

G. Waiver of Subrogation Rights - PERMITTEE shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors.

H. Policies Primary and Non-Contributory - All policies required above are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the COUNTY.

I. Proof of Coverage - PERMITTEE shall immediately furnish certificates of insurance to the COUNTY's Real Estate Services ("Department") evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and PERMITTEE shall maintain such insurance from the time PERMITTEE commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this contract, the PERMITTEE shall furnish certified copies of the policies and all endorsements.

J. Insurance Review - The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

(1) Any such reduction or waiver for the entire term of the contract and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. PERMITTEE agrees to execute any such amendment within thirty (30) days of receipt.

5. **DAMAGE PROVISIONS:** PERMITTEE must within thirty (30) days of the date of damage, repair any portion of the Use Area and/or Use Area improvements damaged by PERMITTEE, its employees, agents or invitees, unless earlier repairs are required to maintain the safety of the Use Area.

6. **ATTORNEY'S FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph will not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable to the COUNTY under Paragraph 4, INSURANCE AND INDEMNIFICATION, and Paragraph 14, RELEASE OF INFORMATION.

7. **CONDUCT OF EMPLOYEES:** PERMITTEE is responsible for the conduct of its employees, volunteers, agents, members and invitees on the Use Area and the entire property of which the Use Area is part, provided the presence of such persons on the Use Area or the entire property of which the Use Area is part is related to PERMITTEE's use of the Use Area under this permit.

8. **TERMINATION:**

A. Default: In the event that either party violates any of the terms and conditions of this permit, the aggrieved party may give written notice of specific violation and demand for correction.

B. Termination for Default: If, within one (1) day after written notice and demand, the violating party has not commenced correction of the violation or shown acceptable cause therefore, the aggrieved party has the right to immediately terminate this permit and pursue any and all remedies provided by law.

C. Suspension: PERMITTEE agrees that COUNTY may immediately suspend and/or terminate this permit, and further, PERMITTEE agrees to immediately cease operations if PERMITTEE fails to meet the insurance requirement, as stated herein.

D. Liability for Breach: Termination for default will not excuse either party from

any liability for breach of contract; such breach will be deemed total.

9. **DESIGNATION:** The Regional Parks Division is designated to administer and enforce this permit. Further, the Director, Real Estate Services is authorized to exercise all provisions of this permit on behalf of COUNTY, including but not limited to termination for default provisions.

10. **PERMITS AND LICENSES:** PERMITTEE must obtain and maintain current status any and all other permits and/or licenses required by any other COUNTY department, local, state, and/or federal authority, which is required to engage in the use permitted herein.

11. **NO INTEREST OR ESTATE:** PERMITTEE agrees that it does not have and will not claim at any time any interest or estate of any kind or extend whatsoever in the Use Area and the entire property of which the Use Area is part, by virtue of this license or its occupancy or use hereunder.

12. **POSSESSORY INTEREST:** PERMITTEE recognizes and understands that this permit may create a possessory interest subject to property taxation and that PERMITTEE may be subject to payment of property taxes levied on such interest.

13. **ASSIGNMENT AND TRANSFER:** PERMITTEE is not allowed to assign or transfer this permit to any other person, group or organization.

14. **RELEASE OF INFORMATION:** Any information or other materials submitted by PERMITTEE in connection with this permit are for the exclusive use of the COUNTY, but are subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 ~~et seq.~~ In the event a request for disclosure of any part or all of any information or other material is made to the COUNTY, the COUNTY will make good faith efforts to notify the PERMITTEE of the request and will thereafter disclose the requested information unless the PERMITTEE requests nondisclosure and agrees to indemnify, defend with counsel approved by COUNTY, and hold the COUNTY harmless in any/all actions brought to require disclosure. The PERMITTEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify PERMITTEE of any such disclosure request and/or releases any information received from the PERMITTEE.

15. **JURY TRIAL WAIVER:** PERMITTEE and COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either PERMITTEE against COUNTY or COUNTY against PERMITTEE on any matter whatsoever arising out of, or in any way connected with, this permit, the relationship of PERMITTEE and COUNTY, PERMITTEE's use or occupancy of the Use Area and the entire property of which the Use Area is part, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

16. **FORMER COUNTY OFFICIALS:**

a. PERMITTEE agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent PERMITTEE. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners,

associates or members of the business. The information also includes the employment with or representation of PERMITTEE. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "B", List of Former County Officials.)

b. If during the course of the administration of this Use Permit, the COUNTY determines that the PERMITTEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Use Permit may be immediately terminated. If this Use Permit is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

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17. **ENTIRE AGREEMENT:** This permit constitutes the entire agreement between the parties. No modifications or waiver will be binding unless made in writing and signed by both parties.

COUNTY OF SAN BERNARDINO

**PERMITTEE: U.S. DEPARTMENT OF
THE INTERIOR**

Dennis Hansberger, Chairman
Board of Supervisors

By: _____
Nancy King

Date: _____ Title: Geophysicist

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Date: _____

J. RENEE BASTIAN, Clerk of the
Board of Supervisors

By: _____
Deputy

Date: _____

Approved as to Legal Form:

RONALD D. REITZ, County Counsel
San Bernardino County, California

By: _____
Deputy

Date: _____

EXHIBIT "B"

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the LANDLORD, the date the Official entered LANDLORD's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION